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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/755,635

01/05/2001

Robert E. Dvorak

BLFR 1001-1

4822

22470 7590 11/24/2009  
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EXAMINER

KARDOS, NEIL R

ART UNIT

PAPER NUMBER

3623

MAIL DATE

DELIVERY MODE

11/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/755,635	<b>Applicant(s)</b> DVORAK ET AL.	
	<b>Examiner</b> Neil R. Kardos	<b>Art Unit</b> 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-35,40-46 and 94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-35,40-46 and 94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

This is a **NON-FINAL** Office Action on the merits in response to communications filed on September 8, 2009. Currently, claims 26-35, 40-46, and 94 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 8, 2009 has been entered.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claim 35 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

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Claim 35: Claim 35 recites "wherein the action includes." There is insufficient antecedent basis for this limitation in claim, as "the action" was cancelled in the amendment to claim 94. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 26-35, 37, 40-46, and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over ACNielsen's Spaceman (as evidenced by "Spaceman Suite: Merchandising Services," hereinafter "Spaceman," and the single page "SPACEMAN Store Suite," hereinafter "Spaceman SS") in view of Shelf Logic (as evidenced by "Shelf Logic 2000: Planogramming Software: About Shelf Logic 2000," hereinafter Shelf Logic 2000" and "Introducing High Performance Display Planning Software for Retailers and Manufacturers At Under \$1,000," hereinafter "Shelf Logic Press Release"), and further in view of Landvater (U. S. 6,609,101).**

Claim 94: Spaceman discloses a computer-implemented method of improving the efficiency of planning presentations and simulating demand and stocking requirements for items placed in standard display fixture types used in stores having different floor plans, including:

- eliciting from a first user a schedule of display fixtures, to be used in a plurality of stores having different floor plans and storing the schedule in a data structure

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stored in computer readable memory (see page 3: Planogramming made simple, disclosing "you can build or edit planograms in minutes using planogram libraries that store commonly used elements" and "supports a wide variety of fixture types, allowing you to re-create almost any in-store setting"; page 5: Loaded with Easy-to-Use Features, disclosing "a wide range of in-store fixtures to accurately simulate the retail environment"), wherein the resulting schedule of named display fixtures includes

- fixture identifiers for a plurality of fixture types (see id., disclosing a plurality of fixture types; see figure on page 4: "supports pallets, pegboards, freezer chests, baskets, hanging bars, rods and open shelves");
  - names for instances of a fixture type that are used for particular groupings of product assortments (see above-cited portions);
- eliciting from a second user a store-by-store schedule of named display fixtures used in the stores, wherein the stores have varying floor plans (see bottom figure on page 3: "SPACEMAN Output Designer is a page layout designer that makes use of frames and drag-and-drop technology to make the creation of custom layouts easy"; see also Spaceman SS: "Link floor plans directly to SPACEMAN planograms for accurate data analysis"; "Create 3D views of your stores at a single keystroke"; "Utilize existing CAD files as templates to lay out floor plans"; "Speed up seasonal changes and special promotions with store-specific planograms"; "Produce high-productivity plans across the enterprise or for each individual store");

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- eliciting from a third user a plan to stock the named display fixtures with items to be displayed, without requiring the knowledge of the varying floor plans of the stores, and storing the resulting stocking plan in a data structure stored in computer readable memory (see the figures on page 3, which depict individual shelving units of products; figure at the top of page 4, depicting individual fixture types and item quantities: "With SPACEMAN Suite you have 3-Dimensional Planogram Viewing supporting Block, Units, Shapes, Product and Fixture Live ... Position and Fixture Labels"; see also Spaceman SS: "Link floor plans directly to SPACEMAN planograms for accurate data analysis"), wherein the stocking plan for the named display fixtures includes
  - presentation quantities of items required (see id.).
- simulating sales of the items from the named display fixtures at the stores using a computer and calculating quantities that need to be ordered to accommodate the simulated sales and the presentation quantities required, and outputting the calculated quantities (see page 2: SPACEMAN Stock Planner, disclosing "With SPACEMAN Stock Planner, you gain the tools to model days of supply, minimum case quantities or inventory counts; pallet configurations and warehouse racking; direct store delivery (DSD) against multiple vendor schedules; as well as demand-variable factors, to allow for safety stock"; page 3: Providing In-Depth Merchandising Analysis, disclosing "advanced replenishment modeling and analytical capabilities . . . based on actual supply and demand schedules by assigning inventory models to each product in a category"; page 4:

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Create Sophisticated Reports and Presentations, disclosing "now you can easily report, present and chart key merchandising and replenishment facts").

Spaceman does not explicitly disclose wherein the schedule of named display fixtures includes capacities of the fixture types to hold items. However, Spaceman at least suggests this limitation (see page 2: SPACEMAN Stock Planner, disclosing pallet configurations and warehouse racking in the context of inventory and safety stock; page 3: Providing In-Depth Merchandising Analysis, disclosing making changes to product inventory models and facings in order to change the planogram). Further, this feature, if not inherent, is at least obvious based on Spaceman's use of the term planogram (See Wikipedia: A planogram defines which product is placed in which area of a shelving unit and with which quantity). Furthermore, Shelf Logic 2000 discloses this limitation. The figure on page 4 shows shelves of different sizes, and the figure on page 2 depicts different item sizes. By knowing shelf sizes and item sizes, one knows the capacity of each shelf for each item. Thus, Shelf Logic 2000 teaches capacities of the fixture types to hold items. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Shelf Logic and Spaceman as they are both software products for planogramming, and one of ordinary programming skill would be able to combine their features. This combination of known elements retains the functionality of the separate elements and produces a result that would be predictable to one of ordinary skill in the art.

Spaceman does not explicitly disclose wherein the stocking plan for the named display fixtures includes dates during which the items will be displayed at particular stores. However, Spaceman at least suggests this limitation (see Spaceman SS, disclosing seasonal changes). Landvater explicitly discloses this limitation (see figures 14 and 15, column 1, lines 40-50;

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column 2, lines 20-27, column 14, lines 25-65, column 15, lines 1-6 and 17-25, wherein the good has a time of display and quantities to be displayed). Spaceman discloses a computer program for planogramming. Spaceman further discloses stocking considerations and shelf capacity associated with the display plans. Landvater discloses storing information concerning presentations and displays in the system and using this information to plan inventory. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the stocking and inventory planning aspects of Landvater in the display planning system of Spaceman in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for (see column 14, lines 25-35 and 55-65 of Landvater).

Claim 26: Spaceman discloses designating whether or not a quantity of an item at the selling location should be allowed to fall below the presentation quantity between deliveries (see page 2: "SPACEMAN Stock Planner"; pages 3-4: "Providing In-Depth Merchandising Analysis").

Claims 27-29: Spaceman does not expressly disclose modeling lead times with a plurality of time elements, which collectively represent the overall lead time from order to stocking of the named display fixtures at particular stores, and wherein the time elements include delivery of the item from a stocking location, preparing the delivered item for sale, or collect data, review action recommendations, process data, pick goods at a stocking location, and ship



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the item to the selling location. However, Spaceman suggests this limitations (see page 2: "SPACEMAN Stock Planner"; pages 3-4: "Providing In-Depth Merchandising Analysis").

Landvater discloses wherein the time elements include delivery of the item from a stocking location (See figure 1, column 6, lines 45-67, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, which discloses a stocking location) and preparing the delivered item for sale (See column 3, lines 10-30, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25- 65, which discloses setting up the display of the delivered good). Landvater further discloses wherein the time elements include time required to collect data, review action recommendations, process data, pick goods at a stocking location, and ship the item to the selling location (See column 3, lines 10-30, column 7, lines 1-25, column 8, lines 25- 45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, column 16, lines 35-65)

Furthermore, Examiner takes Official Notice that it was well-known in the art at the time the invention was made to incorporate delivery time, prep time, and the other claimed elements in a lead time calculation. If not inherent in a lead time calculation, it would at least have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the claimed time elements into a lead time calculation. One of ordinary skill in the art would have been motivated to do so for the benefit of calculating an accurate lead time.

Both Spaceman and Landvater are concerned with stocking shelves to maintain displays. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the time elements discussed by Landvater (and which are well known in the art) in the display planning system of Spaceman in order to more accurately calculate the stock

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replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for (see column 14, lines 25-35 and 55-65 of Landvater).

Claims 30-35: Spaceman discloses timing of stock considerations for displays (see page 2: "SPACEMAN Stock Planner"; pages 3-4: "Providing In-Depth Merchandising Analysis"), but does not explicitly disclose time elements that include periodic dates for actions necessary to make the item available at the plurality of selling locations, time of distributing the good from one or more first level stocking locations to a plurality of second level stocking locations, time for distributing the item from one or more first level stocking locations to a plurality of second level stocking locations, distributing the item from a supplier through one or more stocking locations to a plurality of selling locations, or time for distributing the item from a supplier through one or more stocking locations to a plurality of selling locations, or distribution of the item from one or more stocking locations to a plurality of stores. Spaceman suggests these limitations (see page 2: "SPACEMAN Stock Planner"; pages 3-4: "Providing In-Depth Merchandising Analysis").

Landvater discloses wherein the time element further includes periodic dates for actions necessary to make the item available at the plurality of selling locations (See figures 8 and 9, column 4, lines 20-40 and 54-66, column 10, column 11, lines 15-35, wherein time periods for forecasting are set in the system), time of distributing the good from one or more first level stocking locations to a plurality of second level stocking locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed among level 2 and 3 stocking locations using a

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time element), time for distributing the item from one or more first level stocking locations to a plurality of second level stocking locations (See figure 1, column 3, lines 10-30, column 6, lines 45- 67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed among level 2 and 3 stocking locations using a time element).

Landvater further teaches wherein the time elements include time for distributing the item from a supplier through one or more stocking locations to a plurality of selling locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1- 25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed from a supplier to the selling location using a time element) and wherein the time elements include time for distributing the item from a supplier through one or more stocking locations to a plurality of selling locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, wherein the good is distributed from a supplier to the selling location using a time element).

Furthermore, Examiner takes Official Notice that it was well-known in the art at the time the invention was made to incorporate the claimed elements in a lead time calculation. If not inherent in a lead time calculation, it would at least have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the claimed time elements into a lead time calculation. One of ordinary skill in the art would have been motivated to do so for the benefit of calculating an accurate lead time.

Both Spaceman and Landvater are concerned with stocking shelves to maintain displays. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the time elements discussed by Landvater (and which are well known in the art) in the

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display planning system of Spaceman in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for (see column 14, lines 25-35 and 55-65 of Landvater).

Claim 40: Spaceman discloses wherein the simulating includes adding the presentation quantities and the simulated sales for the item at the stores (see page 2: "SPACEMAN Stock Planner"; pages 3-4: "Providing In-Depth Merchandising Analysis," disclosing modeling supply and demand schedules).

Claims 41 and 44: Spaceman, Shelf Logic, and Landvater do not explicitly disclose selecting the presentation quantity to be the average presentation quantity for the location during the predetermined selling period and the largest presentation quantity associated with the item at the selling location for any day of the predetermined selling period. However, Examiner takes Official Notice that it was well-known in the art at the time the invention was made to use average and maximum values in inventory calculations. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use such well-known values in the simulations of Spaceman. One of ordinary skill in the art would have been motivated to do so for the benefit of obtaining a more accurate estimate and a worst-case scenario estimate.

Claims 42-43: Spaceman and Shelf Logic do not explicitly disclose and Landvater teaches wherein the approach selected uses:

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- a presentation quantity for the selling location on the first day of the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities).
- a presentation quantity on the day of the predetermined selling period when the good is received at the selling location (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17- 25, which discuss presentation quantities).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the stocking and inventory planning aspects of Landvater in the display planning system of Garry in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for (see column 14, lines 25-35 and 55-65 of Landvater).

The cited references do not explicitly disclose selecting among a plurality of available approaches to calculating the presentation quantity. However, it is old and well known in the art to provide user's with menus of choices from which the user can select a choice to be implemented by the software. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a menu for choosing an approach to select the type of presentation quantity value to use in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for (see column 14, lines 25-35 and 55-65 of Landvater)

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Claim 45: Spaceman and Shelf Logic do not explicitly disclose the simulating aspect of the claim, as set forth above with respect to claim 94. Landvater teaches simulating, wherein the simulating includes selecting the larger of the presentation quantities or the projected demand requirements for the item at the selling locations (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 20-50, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities at the maximum and minimum acceptable levels).

Spaceman discloses a computer program for planogramming. Spaceman further discloses stocking considerations and shelf capacity associated with the display plans. Landvater discloses storing information concerning presentations and displays in the system and using this information to plan inventory. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the stocking and inventory planning aspects of Landvater in the display planning system of Spaceman in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for (see column 14, lines 25-35 and 55-65 of Landvater).

While Landvater does not explicitly disclose *selecting* the quantity, it is old and well known in the art to provide user's with menus of choices from which the user can select a choice to be implemented by the software. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a menu for choosing an approach to select the type of presentation quantity value to use in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for (see column 14, lines 25-35 and 55-65 of Landvater).

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Claim 46: Spaceman does not explicitly disclose wherein the presentation quantity used is the presentation quantity for the selling location on the last day of the predetermined selling period. However, Examiner takes Official Notice that it was well-known in the art at the time the invention was made use the presentation quantity of the last day of the predetermined selling period in inventory calculations (see e.g., Garry, cited in the previous office action, page 4, section 1, page 6, sections 1, 2, and 4, page 7, section 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute this presentation quantity for the presentation quantities taught by Spaceman. This simple substitution of presentation quantities retains the functionality of the separate references and produces a result that would be predictable to one of ordinary skill in the art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Michael Garry, "Managing Space from the Top," *Progressive Grocer* 71:3, pp. 81-83 (1992).
- Business Wire, "JDA Software Announces Availability of Intactix pro/space 'Plus' 2.0," *Business Editors/High-Tech Writers*, p. 1 (New York: 2000).
- Anonymous, "More Than Great Code," *Chain Store Age* 76:6, pp. 4C-7C (2000).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil R. Kardos whose telephone number is (571) 270-3443. The examiner can normally be reached on Monday through Friday from 9 am to 5 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neil R. Kardos  
Examiner  
Art Unit 3623

/Neil R. Kardos/  
Examiner, Art Unit 3623  
/Jonathan G. Sterrett/  
Primary Examiner, Art Unit 3623